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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 November 1993, at 10 a.m.

Chairperson: Mr. MUTERAHEJURU

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS (agenda item 4) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Nicaragua concerning articles 10 to 12 (continued) (E/1986/3/Add.15 and 16; E/C.12/WG/1992/CRP.2/Rev.1)

1. Mr. SEVILLA SIERO (Nicaragua) said that he would endeavour to reply as fully as possible to the questions asked by members of the Committee on the previous afternoon at the 27th meeting. Any supplementary information required would be submitted in writing by his Government as soon as possible.

2. Mr. Texier had raised a question concerning the apparent contradiction in the statement in paragraph 119 of the report (E/1986/3/Add.16) that while social assistance had increased in recent years, the number of victims had also been growing. The statement simply meant that while social assistance had increased, the rise in the number of claimants had been such that it had overwhelmed the capacity of welfare programmes.

3. Mr. Texier had also expressed concern about reports of an incident involving the expulsion of squatters in Managua. As far as he was aware, the municipality could only expel people on substantiated legal grounds. His delegation had no detailed information about the case and would therefore take up the matter with his Government and provide the Committee with the necessary clarifications in writing.

4. Mr. Simma had commented on the discrepancy between the statistical data provided in the report and statistics from other sources. The statistics presented in the report had been drawn from government sources. It was perfectly possible for statistics provided by other sources to diverge from official statistics. Mr. Simma had also inquired whether government housing policy was totally market-oriented and if so, whether that would not deprive many people of their right to housing. There were no grounds for those misgivings. Information on the achievements of the present Government in the housing sphere could be found on pages 18 to 21 of annex 3 to the report which gave details of a number of specific housing projects for low income groups. As for the criteria applied in allocating housing, the Government endeavoured to give priority to those most in need, who were identified by a case-by-case examination of each application. His delegation would provide information on the percentage of Gross Domestic Product devoted to housing as soon as possible. On the basis of that information, it was clear that the Government did not consider housing simply as a matter of supply and demand within an unfettered market. In addition, when the current Government had taken office, in 1990, the housing sector had been totally disorganized.

5. In reply to a question put by Mrs. Bonoan-Dandan, concerning the statement in paragraph 148 of the report that "society remains largely unaware of the situation of 'children in especially difficult circumstances'", he said that the statement did not mean that the Government was ignorant of the problem. There were, however, sectors of Nicaraguan society that remained

unaware of the situation. The multisectoral approach adopted by the Government of Nicaragua in addressing that problem, with coordination by the recently-established Ministry of Social Welfare, was described in paragraphs 150-152 of the report (E/1986/3/Add.16).

6. Mrs. Taya had expressed concern about the level of Nicaragua's dependence on external aid. Nicaragua's difficult economic position was no secret, and it was true that a high proportion of the Government's programmes were financed by external funds. However, if the Government succeeded in reviving the Nicaraguan economy and in particular, in increasing its exports, it would be possible to lessen its dependence on external funds. Mrs. Taya had also requested details of the distribution of land ownership in Nicaragua. In order to reply, it was first of all necessary to distinguish clearly between rural, semi-rural and urban property. It was not possible for his delegation to provide details at that juncture, although he assured the Committee that it would furnish the details in writing as soon as possible.

7. Mr. Texier had asked for information on the state of progress in the regularization of real estate ownership in Nicaragua. He had also asked for information on the situation of people who had taken part in the seizure of property and had asked why the Oficina de Ordenamiento Territorial (Real Estate Registry) had only dealt with 2,300 cases when, according to Terre des Hommes France, there were 100,000 cases pending. The Registry had been established for the purpose of regularizing real estate ownership in conformity with Acts Nos. 85 and 86, which had been adopted between the elections of February 1990 and the accession to power of the new Government in April 1990. The Registry considered applications by persons who wished to effect transactions with their property, and certified that they possessed due legal title to the property concerned, thereby allowing them to proceed with the transaction. If the Registry did not certify that the property had been acquired in conformity with the Acts, the matter was transferred to the Attorney-General's office. The difference between the figures was perhaps attributable to the fact that the Registry was not competent to deal with rural property, which came under the Agrarian Reform Act. Consequently, it was possible that the 100,000 cases referred to concerned rural, rather than urban, property.

8. In reply to a question from Mrs. Ider on the status of the Office of the Human Rights Ombudsman, referred to in paragraph 74 of the report (E/1986/3/Add.16), he said that the adoption by the National Assembly of the relevant legislation to set up the Office had been delayed by the current political crisis in Nicaragua, which had brought other concerns to the forefront of the agenda. However, a broad consensus had been reached within Nicaraguan society on the need to bring to a conclusion a number of projects that had been pending, including the establishment of the Office of the Human Rights Ombudsman. He therefore had every confidence that the bill would rapidly be adopted.

9. Outside the governmental sphere, there were three bodies in Nicaragua concerned with human rights: the Comisión Permanente de Derechos Humanos, the Asociación Nicaraguense pro Derechos Humanos and the Centro Nicaraguense de Derechos Humanos. Paragraphs 58 to 79 of the report (E/1986/3/Add.16) described a variety of domestic legal provisions to ensure the protection of

human rights. The cornerstone of human rights protection was article 46 of the Constitution. As to whether the various human rights instruments could be invoked before the courts, it was clear from paragraph 60 of the report that they could be applied by the judicial and administrative authorities once they had been ratified or Nicaragua had acceded to them and the relevant decree of ratification or accession had been published.

10. His delegation had also been asked whether there were any national institutions or machinery responsible for ensuring the observance of human rights. The relevant institutions, which were described in paragraphs 62 to 64 of the report (E/1986/Add.16), were the courts, the Attorney-General's Office, the Civil Inspectorate of Professional Responsibility, the Human Rights Commission of the National Assembly, the Office of the Military Assessor of the Sandinist People's Army, the Tripartite Commission comprising the Office of Cardinal Miguel Obando y Bravo, the International Support and Verification Commission (CIAV-OAS) and the Central Government.

11. The recent adoption of the Government's Social Agenda, whose aim was to protect the most vulnerable sectors of the population was also important in relation to the protection of human rights. It pursued three fundamental objectives: (1) support for the programmes of the Ministry of Social Welfare (MAS) and of the Emergency Social Investment Fund (FISE) in the field of employment; (2) changes to simplify access by the population to basic social services and to achieve a rational use of resources and develop grass-roots participation; (3) support for marginal productive sectors in order to facilitate their access to the market and to credit.

12. In order to achieve the objectives of the Social Agenda, a four-pronged approach had been adopted, involving the decentralization of basic services, community participation, better coordination in the provision of State services in order to avoid overlapping, and targeting programmes to benefit those most in need.

13. Mr. MIRANDA CASTILLO (Nicaragua) said that the decision to establish the Office of the Human Rights Ombudsman was the outcome of the dialogue between the countries of Central America and those of the European Community in the context of the San José process. Following San José VII, preparatory work had begun on the establishment of an Office of the Human Rights Ombudsman in Nicaragua, and he was confident that the National Assembly would rapidly adopt the relevant bill.

14. Mr. TEXIER underscored the importance in Central America of the human rights ombudsman. In Guatemala a former Human Rights Ombudsman had later become the head of State, and in El Salvador the Human Rights Ombudsman played an essential role in the peace process and in the promotion and protection of human rights.

15. Concerning the occupation of lands and evictions, he said that he was not satisfied with the answers given by the delegation of Nicaragua, which had stated that it had no information on evictions carried out in El Boer, a squatter community of 500 families. The example cited was merely a reflection of a general problem that had been confronting Nicaragua since well before

the coming to power of the current Government. According to a report by the non-governmental organization Habitat International Coalition, the mayor of Managua had used bulldozers and anti-riot police in an attempt to raze El Boer, which was on government land (Annex III to the report); evictions were also said to be pending in the Managua communities of Extención La Primavera, Tierra Prometida, Sector Mercado Mayoreo and Rubén Dario. Clearly, the problem was widespread, 182 squatter settlements having been counted since 1990 in Managua alone. That being the case, what had been done to draft a nationwide housing plan and what was Nicaragua's policy on land occupations? Evictions could not be the only response: efforts must also be made to meet the country's housing needs. He asked whether the delegation of Nicaragua was familiar with the incidents reported by the Habitat International Coalition, which apparently were of recent date.

16. Mr. MARINDA CASTILLO (Nicaragua) said that the problem was a complex one. He would transmit the documents provided by Habitat International Coalition to his Government for study and would endeavour to obtain further information as soon as possible on the events referred to therein.

17. Mrs. IDER sought clarification on the procedures for lodging complaints of human rights violations. Did the delegation of Nicaragua have any data on the number of complaints heard in 1991 and 1992 by the institutions and machinery referred to in paragraph 62 of the report (E/1986/3/Add.16)? What had been the results? Had the complaints concerned primarily economic, social and cultural rights or civil and political rights? Likewise, could the delegation of Nicaragua provide data on the complaints received by the Office of the Military Assessor of the Sandinist People's Army (para. 63 of the report) and how such complaints had been followed up?

18. If the delegation of Nicaragua did not have any data on those questions at present, it might wish to include such details in its next report.

19. Mr. MIRANDA CASTILLO (Nicaragua) said that his delegation did not have the statistics to which Mrs. Ider had referred; he would therefore ask for them to be forwarded by its Government.

20. If a Nicaraguan citizen believed that his human rights had been violated, he often applied to one of three private human rights organizations: the Comisión Permanente de Derechos Humanos, the Asociación Nicaraguense pro Derechos Humanos or the Centro Nicaraguense de Derechos Humanos. In many cases, those bodies then conveyed the complaints to the relevant government authorities. Many persons with complaints came to Managua from the provinces to obtain satisfaction; that suggested a need for decentralization.

21. Once the Office of the Human Rights Ombudsman was set up, it would to a certain extent replace the work of the private human rights bodies. It was to be hoped that such bodies would refrain from politicizing the issues involved. He was confident that the Human Rights Ombudsman would succeed in solving many cases.

22. Mrs. BONOAN-DANDAN said that she had not received a satisfactory answer to her question on what measures government institutions were taking to address what the delegation of Nicaragua itself had termed a "national

emergency", i.e. the situation of children in difficult situations. What percentage of the budget was allocated for assisting such children, for example children affected by evictions or living in insalubrious squatter settlements.

23. Mr. SEVILLA SIERO (Nicaragua) said that, as pointed out in paragraphs 116 and following of the report (E/1986/3/Add.16), a number of special measures were being taken; he did not have exact information and would try to obtain further details.

24. Mr. MARCHAN ROMERO said that there appeared to be an error in paragraph 131 of document E/1986/3/Add.16: how could children or, indeed, anyone be excluded from the legal system, which by definition covered all citizens?

25. Mr. SEVILLA SIERO (Nicaragua) agreed that that must be a drafting error; he would look into the matter and send the Committee a written correction.

26. Mr. MIRANDA CASTILLO (Nicaragua) said that the formulation in paragraph 131 was probably a reference to children who had been marginalized.

27. Mr. SIMMA asked to what extent the human rights machinery in Nicaragua addressed violations of economic, social and cultural rights. Would the Human Rights Ombudsman take such violations sufficiently into account?

28. Structural adjustment measures had had an enormous impact on the enjoyment of economic, social and cultural rights, and it was precisely in times of economic austerity that the monitoring and implementation of such rights acquired particular importance. That had been recognized by the Commission on Human Rights in its resolution 1993/12, in which it had affirmed that debt payments should not take precedence over the basic rights of the people of debtor countries to food, shelter, clothing, employment, health services and a healthy environment. It was his understanding, furthermore, that the World Bank and the International Monetary Fund had begun to insert clauses guaranteeing a social safety net in the structural adjustment agreements that they concluded with States.

29. As could be seen from the Committee's general comments Nos. 2 and 3, from which he quoted, the Committee took the view that, even in times of major austerity and severe constraints on resources, efforts to uphold the most basic economic, social and cultural rights must be maintained; the most vulnerable members of society could and should be protected by the adoption of relatively low-cost targeted programmes. A State party's obligations continued to apply, and perhaps became even more pertinent, in times of economic contraction.

30. The Committee had also stressed, in its general comment on the right to housing, that social groups living in unfavourable conditions should be given priority. It had long held the view that certain economic and social rights could be protected at relatively low cost; and he could not see how the safeguarding of security of tenure could be deemed so costly as to be put at risk by a poor economic climate.

31. He would refrain from detailed comment about the information provided in annex 3 on the housing situation; given the fact, however, that a country whose population numbered some 4 million lacked roughly 350,000 housing units, he doubted whether the measures described from page 11 onwards in that annex could be considered adequate.

32. The Nicaraguan delegation had mentioned a new social policy programme. He felt that the Committee should be given adequate information about it in Nicaragua's next periodic report, showing in particular how it was focused on the poorest sectors of Nicaraguan society.

33. Mr. SEVILLA SIERO (Nicaragua), referring to the question about the office of the Human Rights Ombudsman, said that the incumbent would not be a parliamentary commissioner, as in some countries, but an advocate (defensor) serving in the executive branch. His task was intended to cover the protection of rights of all categories, stemming from the commitments assumed by Nicaragua pursuant to all the relevant instruments, international and regional, to which it was a party.

34. In considering Nicaragua's housing problems, it should be noted that the problem was focused overwhelmingly on the capital city, Managua, where the housing shortage was immense, in sharp contrast to other places where, in general, even the poorest had housing. Managua contained roughly one quarter of the country's population, and the situation was exacerbated by the continuing aftermath of the 1972 earthquake, which had destroyed the entire city centre. With regard to the upholding of economic, social and cultural rights during periods of structural adjustment, the problem was one which beset many countries, and had shown, inter alia, that the establishment of a democratic system did not alone ensure general well-being - as had been seen, for example, in the case of eastern Europe. The Nicaraguan Government fully realized, nevertheless, the need to do everything possible to maintain minimum standards.

35. Ms. TAYA said it appeared, from the information provided, that living standards were roughly the same in 1990, or possibly somewhat lower, than in 1940. She wondered what the main reasons were for the decline.

36. Mr. SEVILLA SIERO (Nicaragua) said that he was not clear about the reference to living standards. At the previous meeting he had referred to the level of production being roughly the same in 1990 as in 1940. There was, indeed, a connection, since living standards were affected by levels of production, particularly as reflected in export earnings.

37. Mr. GRISSA said that, according to the ethnic data given in the report, the population consisted of 69 per cent mestizos, 17 per cent whites, 9 per cent negroes and 5 per cent indians. Since the lack of mobility among ethnic groups had been a major stumbling-block in the history of many Latin American countries, he would like to have some figures showing how the various ethnic groups were represented in categories such as land ownership, income distribution, access to education and occupation of official posts, showing in particular the share of the white population in the exercise of economic and political management.

38. Mr. MIRANDA CASTILLO (Nicaragua) said that the population was preponderantly mestizo, or mixed race. In general, therefore, there was no conscious awareness of race in Nicaragua. There were a few small, distinct indigenous communities, such as the Miskitos on the Atlantic coast, numbering some 70,000, and a few smaller indigenous groups on the Pacific coast, who spoke Spanish, having no language of their own. As far as he was aware, there were no statistics of the sort requested by the previous speaker, because the ethnic blend in Nicaragua meant that the need for such compilation never arose.

39. Mr. GRISSA said that the percentages provided surely implied that the data did exist. All national Governments possessed such figures, which were essential in dealing with many issues, such as that of equal opportunities.

40. Mr. MIRANDA CASTILLO (Nicaragua) said he acknowledged the percentage figures reported, but had been surprised to discover that the same figures had been quoted for the past 30 years. He had never seen the statistics analysed in further detail but he would seek the information for the Committee. He reiterated, however, that Nicaragua's population was predominantly of mixed race.

41. Mr. WIMER ZAMBRANO said that he could appreciate the difficulty of obtaining accurate detailed statistics on such matters because of the situation prevailing generally in Latin American countries, in which social structures were largely mixed and nowhere aligned with ethnic features. As a result, census and survey returns tended to be inconsistent, since many people might categorize themselves differently at different times in terms of their perceived status in relation to the topic concerned. Some social structures inherited from the colonial era persisted here and there, but even they could not be aligned with ethnic divisions, and would be extremely difficult to pinpoint statistically. The Committee should bear in mind such complexities.

42. Mr. ALVAREZ VITA said that in his own country, Peru, a law promulgated as early as 1956 prohibited the mention of racial origin in any form of documentation. Therefore, a statistical breakdown of the sort being requested would be unobtainable in Peru, because such a compilation would be illegal. He agreed with the previous speaker that, in many Latin American countries, citizens tended to present their racial origin in terms of perceived social status, and might even alter their declared ethnic background occasionally as a result. He himself had once been asked to explain such an inconsistency in a report he had presented to the Committee on the Elimination of Racial Discrimination. Perhaps, in the case of Nicaragua, the Government could be asked whether there was any legal obligation, or prohibition, on the declaring of racial origin.

43. Mr. SEVILLA SIERO (Nicaragua) said that there was no obligation on citizens to mention racial origin in any official documentation.

44. Mrs. JIMÉNEZ BUTRAGUEÑO congratulated the delegation of Nicaragua on having answered the Committee's questions on two reports covering two quite different political periods. She would, however, like to know what percentage of the national budget was allocated to the Ministry of Social Affairs.

45. Mr. MIRANDA CASTILLO (Nicaragua) said that the amount concerned was C$ 98,324,800. For the moment he was unable to state what percentage that represented of the total national budget. That information would be provided at a later date.

46. Mr. ALVAREZ VITA thanked the delegation of Nicaragua for its sincere efforts to reply to the Committee's questions. As Mrs. Jiménez Butragueño had said, it must have been difficult to defend a report that had been produced in very different political circumstances. The difference in time between Geneva and Nicaragua must also have caused problems.

47. In assessing Nicaragua's report, the Committee should not overlook Nicaragua's special circumstances and problems, with which he was personally acquainted and which could be solved only by the Nicaraguans themselves. The country had emerged from a state of war and was situated in a disaster-prone geographical area. At the end of the Second World War Europe had benefited from the Marshall Plan, but no such assistance was available for Nicaragua. The effects of imposed structural adjustment policies, which were not the same for poor developing countries as they were for developed countries, also had to be borne in mind. The situation in Nicaragua should therefore not be viewed solely from a legal standpoint, and that should be reflected in the Committee's report.

48. He pointed out that only recently 11 persons, 9 of them homeless, had frozen to death in a highly developed European country where the homeless totalled around 400,000, only 80,000 subsidized housing units had been built in a year, and many dwellings stood empty. If that could happen in a highly developed country, what would the situation be like in a developing country? What was a minimum acceptable standard of living?

49. Mr. TEXIER, noting that his country had been referred to without being named, said that if that country were to present a report now, it would be only natural for the Committee to condemn it.

50. Mrs. JIMÉNEZ BUTRAGUEÑO said that the fact that a reporting State was a developing country did not exempt it from the obligation to take appropriate measures. The Committee had to be more flexible with economically weak countries, but they still had to take the necessary action.

51. Mr. ALVAREZ VITA agreed that the Committee must not excuse regrettable situations. However, it must also be understanding. The circumstances of Nicaragua were not the same as those of Spain.

52. Mr. SEVILLA SIERO (Nicaragua) thanked members of the Committee for their understanding, cooperation and guidance. His delegation had done its best in difficult circumstances. It wished to cooperate with the Committee and would transmit to the Government of Nicaragua all those questions which it had not been able to answer, with a view to providing the information requested.

53. The CHAIRPERSON thanked the delegation of Nicaragua and informed it that the Committee's concluding observations would be transmitted to it through the Secretariat.

The meeting rose at 12.35 p.m.